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Hannis Taylor

# Why the Pending Treaty with Colombia should be Ratified

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Hon. Wm E. Chandler - hommage et souvenir
Hannis Taylor

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# Why the Pending Treaty with Colombia Should be Ratified

## A Summary of the Incontestable Historical Facts

*By* HANNIS TAYLOR

WASHINGTON
1914

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# Why the pending Treaty with Colombia should be Ratified

## *A Summary of the Incontestable Historical Facts.*

By Hannis Taylor.

In its issue of June 29, 1914, *The WashingtonPost*, despite its many hostile expressions to the contrary, said: "The people would like to know why the United States must pay $25,000,000 to Colombia and $3,000,000 to Nicaragua. They may approve of both treaties if they know all the details, but they will never approve of either if this information is withheld." As it is eminently just and proper that the people of the United States should "know all the details," the purpose of this paper is so to restate them that he who runs may read, so far as the controversy with Colombia is concerned.

The dominating fact, which throws more light than all others upon the real nature of the transaction, was thus stated by Colonel Roosevelt himself in a notable speech made at the University of California, on March 23, 1911: "I am interested in the Panama Canal because I started it. If I had followed traditional conservative methods I should have submitted a dignified state paper of probably 200 pages to the Congress, and the debate would have been going on yet. *But I took the Canal Zone*, and let Congress debate, and while the debate goes on the Canal does also."



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The Taft administration, knowing that President Roosevelt "took the Canal Zone," made an earnest effort to settle the damages thus occasioned upon a just and honorable basis. On March 1, 1913, President Taft, as one of his very last official acts, sent to Congress a message, indorsing a communication from the then Secretary of State, Mr. Knox, which concludes as follows:

"The very latest telegram from Mr. Du Bois shows that in a subsequent interview he took it upon himself informally to ask whether if the United States should, without requesting options or privileges of any kind, offer Colombia $25,000,000, its good offices with Panama, the arbitration of the question of reversionary rights in the Panama Railway, and preferential rights of the canal, the Government would accept; to which he was answered in the negative.

"Included in this most recent telegraphic correspondence is a statement of the impression of the legation at Bogota *that the Colombian Government cherishes the expectation that the incoming administration will arbitrate the entire Panama question,* or will directly compensate Colombia for the value of the territory of Panama, the Panama Railway, the railroad annuities, and the contract with the French Canal Co."

## *Senator Bacon's Speech Upholding Colombia's Right to Arbitration.*

After the present administration had accepted the legacy thus bequeathed, coupled with the declaration that "the Colombian Government cherishes the expectation that the incoming administration



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will arbitrate the entire Panama question," the Colombian Government did, in solemn form, present its case to the Government of the United States, coupled with an earnest appeal for arbitration. At that moment the Chairman of the Senate Committee on Foreign Relations was the late and lamented Senator Augustus O. Bacon of Georgia, who on January 29, 1904, had made a famous speech in the Senate in which he advocated the making "of a treaty with the Republic of Colombia submitting to the Permanent Court of Arbitration at The Hague or to some other tribunal to be agreed upon, for impartial arbitrament and peaceful determination, all questions between the United States and the Republic of Colombia growing out of the matters herein recited." After an exhaustive review of every question of fact and law involved in the taking of Panama, Senator Bacon made this declaration:

I am content with anything which shall commit the Government of the United States in the face of the world to the proposition that, whatever there may be of difference between the United States and Colombia, the United States, as a great overshadowing power which cannot be compelled by this feeble power to do anything, will voluntarily endeavor to agree with it in the settlement of existing differences; and that if it cannot come to an agreement by peaceful negotiations it will not assert its great and resistless power, but that it will endeavor to have a determination of such differences and the claims growing out thereof by some impartial tribunal.

In the light of these antecedents the present administration determined to strive to "come to an agreement by peaceful negotiations," rather than



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yield to Colombia's demand for arbitration. The outcome is embodied in the pending treaty whose merits depend largely upon the following facts.

## *The "Treaty of Peace, Amity, Navigation, and Commerce," Negotiated in 1846.*

When the time arrived to develop our priceless yet remote territory on the Pacific coast it became necessary for us to appeal to Colombia, then called New Granada, for a free passage through her limits to California, which otherwise could only be reached by a nine months' voyage around the Horn, or by the even more dangerous wagon trail across the Rocky Mountains and the Western Desert. The all-important advantage of a shorter route we secured through "A treaty of peace, amity, navigation, and commerce," negotiated in 1846, in which it was stipulated as follows:

The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of transportation which now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States, and for the transportation of any articles of lawful commerce belonging to the citizens of the United States.

As compensation for that privilege (priceless at that time) the United States promised "as an especial compensation for the said advantages, and for the favors they have acquired by the 4th, 5th and 6th Articles of this treaty (articles which secure to the United States reciprocal privileges of importation and tonnage dues, and equal customs duties), the United



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States guarantee, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; AND, IN CONSEQUENCE, THE UNITED STATES ALSO GUARANTEE IN THE SAME MANNER, THE RIGHTS OF SOVEREIGNTY AND PROPERTY WHICH NEW GRANADA HAS AND POSSESSES OVER THE SAID TERRITORY."

In the message in which President Polk submitted the treaty in question to the Senate he said in regard to the right of transit thus won: "THE IMPORTANCE OF THIS CONCESSION TO THE COMMERCIAL AND POLITICAL INTEREST OF THE UNITED STATES CANNOT BE OVERRATED;" and in a special message of February 10, 1847, only two months after the initiation of the treaty, he said:

There does not appear any other effectual means of securing to all nations the advantages of this important passage, but the guarantee of great commercial powers that the Isthmus shall be neutral territory. * * *

THE GUARANTEE OF THE SOVEREIGNTY OF NEW GRANADA OVER THE ISTHMUS IS A NATURAL CONSEQUENCE OF THIS NEUTRALITY. * * * New Granada would not yield this province that it might become a neutral State; and if she should, it is not sufficiently populous or wealthy to establish or maintain an independent sovereignty.

Thus by the most solemn guarantee known to the family of nations the United States pledged itself, *by express contract*, to respect and uphold the sovereignty of New Granada over the Isthmus of Panama, a plain duty already due to New Granada under the general principles of international law.



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In emergencies other than the disturbance of interoceanic transit or peril to the persons and possessions of American citizens, there might be no intervention in the affairs of New Granada, re-established as the United States of Colombia in 1863. By the terms of the treaty, and by the principles of international law, Colombia, as the successor of New Granada, was the sovereign peer of the United States, which, save for the purpose of protecting free transit, might no more land forces on Colombian soil, or even threaten such landing, than she might land such forces on the shores of France or England. After a careful examination of the subject a competent expert has said that, during the 40 years that intervened between the establishment of Colombia in 1863 and the Panama imbroglio of 1903, United States forces were employed in only seven instances and for a total period of 164 days, and in each instance with Colombia's approval. In no case was there fighting, the mere precautionary measures being sufficient.

## *The Spooner Act of 1902 and Hay-Herran Convention of 1903.*

In 1902 was passed the "Spooner Act," providing for the construction of an Isthmian canal, and arming the President with power to obtain from Colombia perpetual control (not cession) for canal purposes of a strip of land from ocean to ocean. Then followed the "Hay-Herran Convention" of 1903, in which it was expressly stipulated that "the convention, when agreed to by the contracting parties, shall be ratified in conformity with the laws of the respective countries," and further "the Government of Colombia



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authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions, as well as the Panama Railroad and all the shares or parts of the shares of that company." The first grave indignity offered to Colombia was embodied in a series of threats, which warned her that her Senate would not, as an independent Legislature, be permitted to discuss all necessary amendments to the treaty in question. Colonel Roosevelt did not hesitate to declare: "when in August, 1903, I became convinced that Colombia intended to repudiate the treaty made the preceding January, under cover of securing its rejection by the Colombian Legislature, I began carefully to consider what should be done. By my direction, Secretary Hay, personally and through the Minister at Bogota, repeatedly warned Colombia that grave consequences might follow her rejection of the treaty." A cable was sent to Bogota saying: "the treaty must not be modified or amended;" and then followed a mandate, saying: "ratify the treaty or you will regret it." Imagine Great Britain addressing such threats to the Senate of the United States when it was about to consider a treaty signed, subject to the approval of that body, between the British Ambassador at Washington and our Secretary of State! Is it strange that under the sting of such threats the Colombian Senate should have refused to ratify the treaty in question on August 12, 1903?

On August 31, Mr. Beaupre sent to Mr. Hay the following telegram, recently published in "DIPLOMATIC HISTORY OF THE PANAMA CANAL" (Sen. Doc. No. 474, 63 Congress, 2nd Session), p. 438.



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*Mr. Beaupre to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogota, August 31, 1903.* (Received September 5.)

August 31, 1903, 2 p. m. I had an interview with Senator Obaldia to-day. He informed me that he is willing to remain so long as there is hope for the treaty, but he is convinced that there is none, and will leave, therefore, on the 6th proximo. Confirms General Reyes statement concerning presidential candidate, and says that the next Senate was made certain for the treaty; that he bears instructions to Governors Insignares and Barrios concerning the elections which will be held next December; that in accepting governorship of Panama he told the President that in case that the department found it necessary to revolt to secure canal, he would stand by Panama; *but he added if the Government of the United States will wait for the next session of Congress canal can be secured without a revolution.* Senator Campo, from the Cauca, is about to leave, thinking the treaty gone.

Confidential. My opinion is that nothing satisfactory can be expected from this Congress. Caro's party has been joined by Velez and Soto and their followers, constituting a decisive majority against the treaty. General Reyes seems to still entertain hopes.

BEAUPRE.

And here the fact should be emphasized that the Constitution of Colombia expressly forbade the alienation of any part of the national domain until the Congress had first expressly authorized the same.

In the light of the evidence now available it cannot be doubted that only President Roosevelt's unreasonable haste prevented the ratification of the treaty by the Colombian Senate. He has himself quoted a high official of Colombia who, on



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November 6, 1903, said in a note to the American Minister at Bogota, that on certain conditions:

The Colombian Government will declare martial law and, by virtue of vested constitutional authority when public order is disturbed, will approve by decree the ratification of the canal treaty as signed; or, if the Government of the United States prefers, will call an extra session of Congress, with new and friendly members next May, to approve the treaty.

## *The Opera Bouffe Revolution of November, 1903.*

The delay occasioned by the exercise of Colombia's constitutional right to deliberate upon a treaty before its ratification precipitated the opera bouffe revolution of November, 1903. Colombia had been at that time an indepenent state for 93 years, and for 77 years had been so recognized by us. On November 3, 1903, the Republic of Colombia was at peace with the United States, and "the treaty of peace, amity, navigation, and commerce" of 1846, expressly guaranteeing, in a very solemn manner, her sovereignty over the Isthmus of Panama was in full force. But despite all those things, the time had now arrived when the pen was to be superseded by the sword. An opera bouffe revolution was being manufactured at Panama, and a dummy republic was on the way. From his published admission it is hard to doubt that as early as August, 1903, President Roosevelt was aware that the secession of the province of Panama was being secretly fomented; and he has openly declared that toward the end of October the attempt appeared to be an imminent probability. In order to



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make that result possible it was absolutely necessary so to arrange the naval forces of the United States that they could be on the spot to prevent the suppression of the so-called revolution by the military forces of Colombia. To that end was issued the famous "fifty mile order" of November 2, 1903. In his message to Congress of January 4, 1904, President Roosevelt said:

In view of these facts I directed the Navy Department to issue instructions such as would insure our having ships within easy reach of the Isthmus, in the event of need arising. * * * On November 2 the following instructions were sent to the commanders of the *Boston*, *Nashville* and *Dixie:* "Maintain free and uninterrupted transit. * * * Prevent landing of any armed force, either government or insurgent, within fifty miles of Panama."

On November 3, 1903, the following order was sent to the commander of the *Nashville* at Colon: "In the interests of peace make every effort to prevent government troops at Colon from proceeding to Panama. The transit of the Isthmus must be kept open and order maintained." Thus, while the solemn treaty was in full force and profound peace existing, President Roosevelt issued a military order, preventing Colombia from moving her own troops over her own railway from her own Colon to her own Panama in order to put down an opera bouffe revolution, representing less than one-tenth of the population of the province of Panama, which the 400 troops of Colombia landed at Colon could have instantly suppressed. Under such circumstances the final act of the comedy was concluded. On November 3, at 6 o'clock, the emeute, chiefly promoted by "the



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fire department," took place, the total death roll being one chinaman killed by one of the three shots fired from the *Bogota* on the night of the "secession." The report of the success of the revolution was received at Washington at 9:50 p. m. of November 3, and at 11:18 word was returned directing the commander of the *Nashville* to "make every effort to prevent government troops at Colon from proceeding to Panama." On November 4 a telegram was received from the Panama Consul, saying a proclamation of independence has been issued by the insurgents, and three deputized to draw up a constitution. On November 6 this Government sent the following message to our Panama Consul:

The people of Panama have by an apparently unanimous movement dissolved their connection with the Republic of Colombia and resumed their independence. When you are satisfied that a de facto government, republican in form and without substantial opposition from its own people, has been established in the State of Panama, you will enter into relations with it as the responsible government of the territory.

Thus *a mere consul* was endowed with the august function of recognizing the new republic when satisfied that a de facto government, republican in form and without substantial opposition from its own people, had been established in the State of Panama. A little later in the day the President of the United States recognized the new nation, the Republic of Panama! And on the same fateful day was appointed Minister Plenipotentiary and Envoy Extraordinary from the Republic of Panama Buneau Varilla, a nonresident alien, whose only interest was



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the valorization of the shares of a speculative company. On November 13 he was officially received by the President, the earliest date at which his letters could arrive by steamer from the Isthmus, and five days later the Canal Treaty was signed. It is hard for one at all familiar with the rules of international law to record the details of this strange transaction with a straight face. It is hard not to gasp at this unprecedented process of nation making, a process whereby "the President of the guaranteeing nation, itself unavoidably included in the treaty's provisions, forcibly disabled Colombia from taking the slightest precautionary measures against secession; continued and expanded his hostility, and, then, in one day, 17 hours and 41 minutes from the issuance in the one city of Panama of an insurgent proclamation of independence, recognized a new sovereignty."

## *A Vital Principle of International Law.*

During the Civil War the United States became the special champion of that rule of international law which declares that a premature or unjustifiable recognition either of belligerency or independence of a community in rebellion against the parent state is really an act of intervention which the parent state may meet by a declaration of war. In a note on that subject, written to Mr. Adams in 1861, Mr. Seward said:

"On the other hand, we insist that a nation that recognizes a revolutionary state, with a view to aid its effecting its sovereignty and independence, com-



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mits a great wrong against the nation whose integrity is thus invaded, and makes itself responsible for a just and ample redress."

In the history of the law of nations no near approximation can be found to the process through which the military and naval power of the United States prevented the military forces of Colombia from suppressing a revolution upon her own soil. And the political power of the United States then, within less than two days, recognized the outcome of such a revolution as an independent member of the family of nations. Such conduct upon the part of the United States rendered it "responsible for a just and ample redress," first, because it was a conspicuous violation of the rule of international law, recognized by all states; second, because it was a conspicuous violation of the treaty of 1846 in which that rule was embodied as one of the leading stipulations in an express contract. The double liability resting upon the United States for "just and ample redress" is beyond all controversy so far as international law is concerned. There never has been but one open question in the case: After President Roosevelt's admission "I took the Canal Zone" nothing remained for his successors but the ascertainment of the extent of "a just and ample redress." Under such circumstances could any high-thoughted or chivalrous American desire that an expression of regret should be withheld? The noble sensibilities of Senator Bacon responded to the situation when he spoke of "the United States, as a great overshadowing power which cannot be compelled by this feeble power to do anything." Ex-Minister DuBois, in



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a recent statement, has beautifully expressed the idea in the following form:

"While negotiating for a treaty I made the Colombian authorities understand that under no circumstances would the United States apologize to any nation for a political act—that was our unwritten law that never had been and never would be broken. In purely informal conversations, and in my unofficial memorandum, *I suggested that a chivalrous expression of regret that our friendship had in any way been marred, such as any real gentleman would freely grant to another*, might later be embodied in the treaty as a balm for the wounded feelings of a once friendly nation, which had been humiliated before the world, whose credit had been destroyed in foreign countries, whose borrowing ability had been annihilated, and whose persistent appeals for arbitration had been ignored. The United States in negotiating the treaty and Colombia in ratifying it distinctly understood that no apology was embodied in Article First and nowhere else in the agreement. The opposition to this feature, on the ground that it is an apology, is not just, and is not in the true interesst of the United States."

## *Opinions of Senators Hoar and Cullom.*

It may be said, but not justly, that my position as counsel for Colombia has so biased my mind in her favor as to render me incapable of forming an unprejudiced judgment even upon the questions of international law involved. For that reason I shall appeal to the judgment of two jurists and statesmen who were at the time the most able and venerable supporters in the Senate of the United States of President Roosevelt's administration, and



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his cordial personal and political friends. I refer to Senator Hoar of Massachusetts, and Senator Cullom of Illinois, leaders of the Republican party, whose experience in matters of international law and diplomacy had extended over an unusually long period. A short time before his death Senator Cullom published a solemn and deliberate statement of Senator Hoar's views upon the subject in such a way as to leave no reasonable doubt that they were also his own. In his "Fifty Years of Public Service," pages 212–213, Senator Cullom says:

"Senator Hoar was disposed to be against the recognition of the Republic of Panama, and it has been intimated that he was of the opinion that the Roosevelt Administration had something to do with the bloodless revolution that resulted in the uniting with the United States of that part of Colombia which now forms the Canal Zone. * * * The President wanted the Senator to read a message which he had already prepared, in reference to Colombia's action in rejecting the treaty and the canal in general, which message showed very clearly that the President had never contemplated the secession of Panama, and was considering different methods in order to obtain the right of way across the Isthmus from Colombia, fully expecting to deal only with the Colombian Government on the subject. The President was sitting on the table, first at one side of Senator Hoar and then on the other, talking in his usual vigorous fashion, trying to get the Senator's attention to the message. Senator Hoar seemed adverse to reading it, but finally sat down, and without seeming to pay any particular attention to what he was perusing, he remained for a minute or two, then arose and said: 'I hope I may never live to see the day when the interests of my country are placed above its honor.' He at once retired from the room



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without uttering another word, proceeding to the Capitol. Later in the morning he came to me with a typewritten paper containing the conversation between the President and himself, and asked me to certify to its correctness. I took the paper and read it over, and as it seemed to be correct, as I remembered the conversation, I wrote my name on the bottom of it. I have never seen or heard of the paper since."

And here, by the side of Senator Hoar's outcry, should be reproduced the statement recently made by Ex-Minister Du Bois:

If any person believes it is pleasant for me to oppose a great leader whose fortunes I devotedly followed for ten years, and for whom I have profound esteem, he is radically mistaken. I am a Republican and have been all my life, and I have been urged not to make this statement public, because a successful issue of the treaty will help the Wilson Administration.

*I do not care to live to greet that day where my love of party smothers my love of justice and halts my courage in doing what I believe is right for the true interests of my country.*

Who can wonder that when such devoted friends of President Roosevelt as President Taft and Secretary of State Knox succeeded to power they should have felt under a deep moral obligation to repair the wrong which Colombia had suffered. That thought was never absent from them. President Taft's last important word to Congress was upon this subject.



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## *Colombia's Fruitless Appeal for Arbitration.*

In his communication to President Taft, heretofore quoted, Mr. Knox said: "Included in this most recent telegraphic correspondence is a statement of the impression of the legation at Bogota that the Colombian Government cherishes the expectation that the incoming administration will arbitrate the entire Panama question." That is all that Colombia has ever asked of the United States, a fair hearing before an impartial international tribunal, either The Hague Court or a tribunal specially constituted. No more conclusive argument was ever made than that in which Senator Bacon (at the time of his death the able chairman of the Senate Committee on Foreign Relations) demonstrated Colombia's right to arbitration under the law of nations. Colombia's claim for the value of the territory of Panama, the Panama Railway, the railroad annuities, the contract with the French Canal Co., and other advantages exceeded twofold the pecuniary sum agreed upon in the pending treaty. Not until after her right to have the amount of the damages due her ascertained by an arbitral court had been denied her, was the settlement embodied in the pending treaty entered into.

An attempt has been made to create prejudice against the treaty by the false statement that Colombia has agreed to pay me a contingent fee of $1,000,000, upon its ratification. I am her only counsel and our contract is in writing, and subject to inspection by the Senate Committee on Foreign Relations whenever that body may see fit to call for it. It simply provides that I am to receive just and



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reasonable compensation for my services, when they are concluded; and, in the event of a difference between us as to the amount, such difference shall be adjusted by arbitration. And here, in conclusion, I feel it my duty to say that my zeal in this matter as counsel for Colombia has been increased by the fact that after an exhaustive study of all the antecedents I have been as profoundly impressed, as I could ever be of anything, of the justice of her cause, not only in morals, but under the principles of international law. Therefore, as an American citizen, I feel that a great good has been accomplished for my country in this grave matter by the making of a settlement which will re-establish the ancient and cordial friendship with a neighboring state in which the commerce and industry of the United States will find a region most favorable for its development.

HANNIS TAYLOR.



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